

### **REMARKS**

This responds to the Office Action mailed on August 7, 2007.

Claims 1 and 8 are amended, claims 7 and 15-27 are canceled, without prejudice to the Applicant; as a result, claims 1-6 and 8-14 are now pending in this application.

Support for the amendments may be found in a variety of locations. By way of example only, the Examiner's attention is directed to the original filed specification page 7 second and third full paragraphs lines 11-30; and page 11 second paragraph lines 7-15.

#### **§103 Rejection of the Claims**

Claims 1-5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hadi Salim (U.S. 6,535,482) in view of Tobagi (U.S. Publication No. 2002/0080721). It is of course fundamental that in order to sustain an obviousness rejection that each and every limitation in the rejected claims must be taught or suggested in the proposed combination of references.

Neither of the references standing alone or in combination with one another teaches a technique whereby IP layer processing is idled by withholding a received packet from the TCP layer processing.

Specifically, the Hadi reference teaches determining a rate for processing packets at the IP layer and communicating that back to the sender in two manners. The first sends an ISQ message back to the sender (see FIG. 4 and column 6 lines 56-67) and the second uses an ECN approach that communicates the rate desired of the sender back to the sender via ECN techniques with the ACK (see FIGS. 6-8 and columns 7 lines 6-21; column 8 lines 44-60; column 9 lines 14-29; column 10 lines 1-15; *etc.*). Hadi does not in any way idle IP layer processing in fact the IP layer sends messages to the sender and immediately forwards packets received to the TCP layer where normal ACK processing is done along with ECN enhancements. But, the desired rate of the sender is not achieved by idling the IP layer and withholding packets from the TCP layer so that the ACK timing of the TCP layer is altered.

In Tobagi, it specifically states that there is no altering done of the protocol behavior. See, paragraph 35. Tobagi achieves its desired rate in a manner that is nearly identical to that what was described in Hadi. Namely, Tobagi actively changes the receiving buffer size and alters the rate at which items are read and cleared from the buffer. This causes the normal

protocol behavior to change the size of the receiving buffer's window as communicated back to the sender via the ACK (ECN based approach). But, again the IP layer does not idle and does not withhold packets from the TCP layer and the rate at which the TCP layer communicates acknowledgments is not altered at all; rather the size of the buffer is altered in fields returned with the ACK. This requires the sender to have processing that can inspect and use the ECN based information to acquire the receiving buffer's window size from the ACK. See Tobagi, paragraphs 34-37 and FIG. 8 and related discussions.

Accordingly, the approach taken in both the references fails to idle IP layer processing by withholding packets from the TCP layer and which thereby would alter the TCP ACK rate sent back to the sender. Therefore, the references standing alone and in combination with one another fail to teach each and every limitation of the rejected claim 1 and the rejections should be withdrawn. Applicant respectfully requests an indication of the same.

Claims 6-7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hadi Salim in view of Tobagi and further in view of Mangin (U.S. Publication No. 2001/0017844). Claims 6-7 are dependent from amended independent claim 1; thus, for the amendments and remarks presented above with respect to independent claim 1, the rejections of claims 6-7 should be withdrawn. Applicant respectfully requests an indication of the same.

Claims 8-14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mirashrafi (U.S. 5,574,934) in view of Tobagi. Again to sustain an obviousness rejection each and every limitation in the rejected claims must be taught or suggested in the proposed combination of references.

Applicant has already established above that Tobagi does not alter the TCP clocking rate; rather Tobagi manipulates the size of the receiving buffer and the rate at which items are read from the buffer this results in normal ACK processing at the TCP level but also results in an ECN based approach where the buffer size is communicated to the sender for the sender to take action. The ACK rate is unchanged in Tobagi even if the ACK's include enhanced information about the receiving buffer's size or congestion level.

In Mirashrafi, the ACK processing is not related to TCP/IP protocol processing at all. In Mirashrafi iTone processing is discussed and used. Mirashrafi does not discuss altering the TCP ACK clocking rate; because the ACK's discussed and taught in Mirashrafi relate to iTone processing.

As such the proposed combination fails to teach or suggest altering the TCP ACK clocking rate. Accordingly, the rejections with respect to claim 8 should be withdrawn. Applicant respectfully requests an indication of the same.

### **RESERVATION OF RIGHTS**

In the interest of clarity and brevity, Applicant may not have addressed every assertion made in the Office Action. Applicant's silence regarding any such assertion does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record is relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (513) 942-0224 to facilitate prosecution of this application.

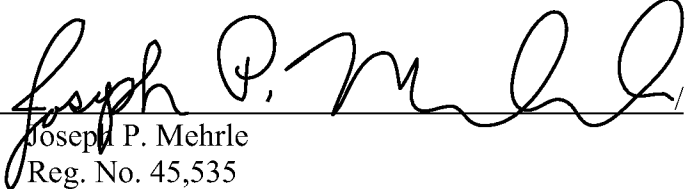
If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By /

  
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